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IN THE

Supreme Court of the United States

October Term, 1962

No. 975

PEARL LEE E. GEORGE, LAURA LEE S. HARRIS and WILLIE LEE B. HARRIS,
Petitioners,

v.

BRYAN CLEMMONS, Sheriff, East Baton Rouge Parish, Louisiana.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

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v.

BRYAN CLEMMONS, Sheriff, East Baton Rouge Parish, Louisiana.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

Petitioners pray that a writ of certiorari issue to review the judgment of the Supreme Court of Louisiana entered in the above-entitled cause on December 6, 1962.

Opinions Below

The Supreme Court of Louisiana did not render an opinion in this cause, but in issuing its final order, judgment or decree, appended, *infra* at page 11, the court explictly rejected petitioners' claims that their punishment and incarceration for contempt violated guarantees secured under the Fourteenth Amendment to the Constitution of the United States.

The trial judge of the 19th Judicial District Court, Parish of East Baton Rouge, did not write an opinion giving his reasons for adjudging petitioners in contempt, but in the hearing before that court on December 3, 1962, on the application for writ of habeas corpus, the trial judge

stated from the bench his reasons for issuing the order which gave rise to these proceedings. This oral statement appears at pages 86 *et seq.* of the transcript of the December 3, 1962 proceedings, and for the convenience of the Court is set out in the appendix to this petition *infra* at pages 12 *et seq.*

Jurisdiction

The judgment of the Supreme Court of Louisiana was entered on December 6, 1962, denying petitioners' applications for writ of habeas corpus, invoking the original jurisdiction of the Supreme Court of Louisiana, and for writs of certiorari, mandamus and prohibition invoking the supervisory jurisdiction of that court over the 19th Judicial District Court of the Parish of East Baton Rouge. In the proceedings in the trial court and before the Supreme Court of Louisiana, petitioners raised and preserved the federal questions brought here for review. Jurisdiction of this Court is invoked under Title 28, United States Code, Section 1257(3). Application for extension of time to file this petition to and including April 3, 1963, was granted in an order issued by Mr. Justice Black dated March 4, 1963.

Question Presented

Whether, without violence to rights secured under the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States, petitioners may be adjudged in contempt of court for refusing to obey an order to move to a section of the courtroom in which Negroes customarily sit, in the absence of a showing that their presence as Negroes in the "white" section of the courtroom by virtue of their color alone, or various overt acts, conduct or activities, in which they engaged in the presence of the court, tended to interrupt or disrupt the court proceedings or to impair the respect due the court's authority?

Constitutional and Statutory Provisions Involved

LOUISIANA CONSTITUTION

Art. 19, Sec. 17

The power of the courts to punish for contempt shall be limited by law.

LOUISIANA REVISED STATUTES

15.11 Inherent power and authority of courts

Every court has the inherent power to enforce the orders which it has power to render, and it is the inherent duty of every judge to see that proceedings in the court in which he presides shall be carried on decently, with dignity and in an orderly manner; hence every court has authority to issue such writs and orders as may be necessary or proper in aid of the jurisdiction conferred upon it; and to punish, as being a contempt, every interference with or disobedience of its process or orders, as well as every act interrupting or tending to interrupt its proceedings, or impairing the respect due to its authority. Failure to appear for arraignment or trial on the day fixed therefor, after notice, shall be considered a contempt of the court's authority; provided that no one shall be punished for any contempt committed outside of the presence of the court, except after hearing upon a rule to show cause why he should not be punished for such contempt, served upon him at least twenty-four hours before such hearing.

15:12. Power of the court to punish for contempt

Justices of the peace and judges of municipal courts shall have power to punish each contempt of their authority by a fine of not more than ten dollars, or by an imprisonment of not more than three

days, or both; judges of all other courts shall have power to punish each contempt of their authority by a fine of not more than one hundred dollars or by imprisonment of not more than ten days, or both.

Statement

On November 29, 1962, petitioners were adjudged guilty of contempt of court, for oral reasons assigned as to acts committed in the presence of the court and were sentenced to be confined in jail for 10 days and pay a fine of $100 and costs, or in default of payment thereof to be confined to jail for an additional thirty days (R. 18, 19, 20).[1] Petitions for writs of habeas corpus were thereupon filed in the 19th Judicial District Court alleging that petitioners were being unlawfully, illegally and unconstitutionally held in prison, and a hearing thereon was held on December 3, 1962.

At this hearing it was disclosed that petitioners were Negroes; that they had been in attendance at a trial held in the 19th Judicial District Court, Parish of East Baton Rouge, Louisiana, on November 29, 1962, presided over by the Hon. Fred. S. LeBlanc, the same judge presiding over the hearing on the petition for writ of habeas corpus.

Testimony disclosed that on November 29, 1962, petitioners entered the courtroom of the 19th Judicial District Court and took seats normally reserved for white persons (Tr. 16, 29, 45, 48, 50, 52, 64, 65). The bailiff came to them advising each of them that the section in which they were seated was reserved for white people, and it was the custom for Negroes to sit in the space reserved for them. He

[1] There are two documents which comprise the "record" in these proceedings—the transcript of the hearing on the writ of habeas corpus on December 3, 1962, in the 19th Judicial District which will be designated by the prefix Tr., and the record of the proceedings in the Supreme Court of Louisiana to be designated by the prefix R.

requested that petitioners move, and they refused (Tr. 29, 43, 52). They were then brought up to the bench before the judge. The judge advised them that it was the custom for whites to sit on the left and colored to sit on the right, unless the colored section was full (Tr. 30, 44, 45, 53). They were advised to sit in the colored section or leave the courtroom (Tr. 52, 53).

Petitioners refused to do any of these things, and the judge thereupon found them guilty of contempt and fined them $100 and ten days in jail or 30 additional days in jail if the fine was not paid (R. 18, 19, 20). Petitioners testified that all they did was to sit in the white section and refused to obey the court's order to move, and this testimony was corroborated by other persons in attendance in the courtroom on the same day, who stated that they did not hear or see petitioners do anything other than sit in the section of the courtroom normally set aside for white persons (R. 64, 65). No witnesses were called and no testimony adduced in the state's behalf.

At the close of the hearing, the court spoke from the bench and gave an explanation of its action in adjudging petitioners in contempt (Tr. 80-87). It was indicated that the trial being held on November 29, 1962, involved a charge of defaming a local judge and the District Attorney of the Parish and that the court was, therefore, concerned about the tensions in the courtroom; that no orders had been issued about seating arrangements, but the fact that these persons sat where whites were sitting constituted conduct which would tend to disrupt or interrupt the proceedings of the court, and that in order to prevent a disruption of the proceedings the court had ordered the petitioners to move from the section in which they were sitting or to leave the courtroom. The judge asserted that in acting as he did to prevent violence, he had issued a lawful order, disobedience of which constituted contumacious conduct by petitioners (Tr. 80-87).

Application was made to the Supreme Court of Louisiana for a writ of habeas corpus, writs of certiorari, mandamus and prohibition. All of these writs were refused on December 6, 1962. The court held that the trial court was vested with broad discretion to make and enforce such orders as it deemed necessary for the preservation of peace and order, and that even if segregated seating in the court was illegal, petitioners were guilty of contempt in disobeying the order in the presence of the court. Their remedy was to test the legality of segregation in a proper legal proceedings. For these reasons, judgment of the trial court in adjudging petitioners in contempt was left undisturbed. This judgment and decree petitioners seek to have reviewed by this Court.

On December 19, 1962, Mr. Justice Clark issued an order granting petitioners' application for admission to bail, pending the timely filing and disposition of a petition or petitions for writs of certiorari in this Court. A good and sufficient bond in the sum of $500 was given by petitioners and approved by state authorities. Petitioners were thereupon admitted to bail and are presently at liberty pending determination of this cause by this Court.

Reasons for Allowance of the Writ

1. The order of the trial judge requiring petitioners to move from the section of the courtroom customarily reserved for white persons to a section of the courtroom customarily reserved for Negroes constitutes state action within the meaning of the decisions of this Court. See *Shelley* v. *Kraemer*, 334 U. S. 1; *Cooper* v. *Aaron*, 358 U. S. 1. However, state policy is promulgated, executed or enforced, whether through legislative enactment, *Brown* v. *Board of Education*, 347 U. S. 483, executive or administrative action, *Monroe* v. *Pape*, 365 U. S. 167; *Burton* v. *Wilmington Parking Authority*, 365 U. S. 715, or through

the exercise of judicial power, *Shelley* v. *Kraemer*, *supra*, it is subject to the reach and limitations imposed by the Fourteenth Amendment to the Constitution of the United States. The proscriptions of that Amendment have been interpreted as barring state-enforced racial discrimination in public schools, *Brown* v. *Board of Education*, *supra*, colleges and universities, *McLaurin* v. *Oklahoma State Regents*, 339 U. S. 637, in interstate and intrastate commerce, *Morgan* v. *Virginia*, 328 U. S. 373; *Gayle* v. *Browder*, 142 F. Supp. 707 (M. D. Ala. 1956), aff'd, 352 U. S. 903; *Evers* v. *Dwyer*, 358 U. S. 202; *Bailey* v. *Patterson*, 369 U. S. 31, in public facilities generally, *Mayor & City Council of Baltimore* v. *Dawson*, 350 U. S. 877; *Holmes* v. *Atlanta*, 350 U. S. 879, even where such facilities may be under lease to private interests, *Turner* v. *City of Memphis*, 369 U. S. 350; *Burton* v. *Wilmington Parking Authority*, *supra*, in residential areas, *Buchanan* v. *Warley*, 245 U. S. 60, in public exhibitions, *State Athletic Commission* v. *Dorsey*, 359 U. S. 533, or in the application of breach of peace laws designed to maintain segregation in privately owned and operated commercial establishments open to the public, *Garner* v. *Louisiana*, 368 U. S. 157. Thus, the decisions of this Court stand for the proposition that the state's enforcement or maintenance of racial discrimination, however manifest or wherever imposed, is contrary to the fundamental law.

It necessarily follows, therefore, that the maintenance or enforcement of segregation of the spectators in a courtroom by a judge is necessarily contrary to this body of law and, therefore, offensive to the requirements of the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States.

2. No evidentiary facts were adduced at the hearing on the writ of habeas corpus to show the existence of any conduct, conditions or circumstances which would tend to disrupt or interrupt the court proceedings involved or to

bring the court in disrepute, other than the attempt on the part of petitioners to sit in the courtroom free of discrimination based upon their race. Petitioners stand convicted of criminal conduct, therefore, in violation of the due process requirements imposed and adhered to by this Court. See *Thompson* v. *City of Louisville*, 362 U. S. 199; *Garner* v. *Louisiana*, *supra*. If the order disobeyed is as petitioners contend without validity, the court was without power to punish them for contempt, see *N.A.A.C.P.* v. *Alabama*, 357 U. S. 449, and, hence, petitioners' punishment and incarceration raise constitutional questions of paramount importance which must be resolved by this Court on its own independent evaluation of the evidentiary facts upon which the contempt adjudication was based. *Blackburn* v. *Alabama*, 361 U. S. 199; *Spano* v. *New York*, 360 U. S. 315; *Napue* v. *Illinois*, 360 U. S. 264.

3. This case presents an issue of great public importance since it involves a question affecting the fair and impartial administration of justice and public confidence in the judicial process. As petitioners have pointed out *ante*, this Court has held in a variety of cases that racial classifications, distinctions or criteria are *per se* invidious and at war with constitutional mandate when promulgated, imposed or enforced pursuant to governmental power. See *Brown* v. *Board of Education* and cognate cases. "Separate but equal" is no longer respectable constitutional doctrine, and it is now clear that racial segregation is racial discrimination. See *Cooper* v. *Aaron*, *supra*.

Thus, courtrooms in which Negro and white spectators are required to sit apart reveal racial discrimination practiced and condoned at the source where the dispensation of equal justice is required. However impartial or free of bias the court may profess to be in the decision making process, Negro and white lawyers, defendants, jurors and spectators see racial discrimination imposed in the forum controlled and presided over by the very authority charged

with interpreting and applying the law without consideration of race. Public confidence in the fair administration of justice is necessarily shaken under such circumstances and, indeed, thoughtful reflection gives rise to doubts as to whether it is possible in a setting, where distinctions based upon a mystique of white superiority and Negro inferiority are practiced, for these distinctions not to permeate and corrupt the integrity of the judicial process.

Certainly, it would be anomaly for judges to be free to impose racial segregation in their courtrooms, when these same judges, in keeping with the decisions of this Court, must strike down such action by all other public officials.

CONCLUSION

Wherefore, for the reasons hereinabove stated, it is respectfully submitted that this petition should be granted.

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APPENDIX

Judgment of Supreme Court of Louisiana

December 6, 1962

In re: State of Louisiana ex rel. Mrs. Pearl Lee B. George et al. applying for writs of habeas corpus, certiorai, mandamus and prohibition.

WRITS REFUSED. The trial judge was vested with a broad discretion to make and enforce such orders as he deemed necessary for the orderly and peaceful conduct of the trial. But even if the separate seating order of the trial court were illegal, as claimed by applicants, applicants were without right to violate the order and flout the dignity of the trial court in the presence thereof, without first having questioned the legality of the order in a proper legal proceeding.

/s/ FWS
/s/ WBH
/s/ EHMcC
/s/ JBH

Statement From Bench of Trial Judge on December 3, 1962

The Court: In this case, and this was a case of considerable tension and the court was mindful of that fact, the accused, Reverend B. Elton Cox, was charged in one bill of information with defaming the district judge, Judge Fred A. Blanche, Junior; and in the other one with defaming the district attorney, Sargent Pitcher, Junior, and the court was mindful of these tensions. I think it is my duty as a judge to try to keep down trouble. I try to do it all the time; I don't want anybody to get needlessly injured or killed. It was brought to my attention that threats were made because of this case. Somebody threatened the life of the district attorney; Reverend Jelks, the local NAACP leader, said his life had been threatened, so I was on the alert, so to speak, to be certain, as far as I could go, to prevent any difficulty. Reverend Jelks came up and talked to me and he praised me very highly. I don't know, I won't go into the purpose, and, as I said, I have issued no orders on seating arrangements in the courtroom. I told him that before these incidents occurred, but when I saw the situation develop, the tenseness of the situation, and I have been in this parish a long time, I have been district attorney here where we have had people searched coming in the doorway there, the spectators, because they were drinking and we suspected that they had guns on them, so the judge would order them searched. Now their rights might have been violated, but the judge didn't want anybody killed, and I think the judge was acting properly and legally. Now, we go back to the Code of Criminal Procedure, Article 11: "Every court (and the jurisprudence is to this same effect) has the inherent power to enforce orders which it has power to render, and it is the inherent duty of every judge to see that the proceedings in the court in which he presides shall be carried on decently, with dignity and in an orderly manner. Hence every court has authority to issue such writs and orders as may be necessary or proper in the aid of the jurisdiction conferred upon him, and to punish as

being a contempt, every interference with or disobedience of its process or orders as well as every act interrupting or tending to interrupt its proceedings or impairing the respect due to its authority." Now, in that connection these people, these relators, one of them came in first and then the others came in afterwards. That was something tending to disrupt or to interrupt the proceedings here. There were white people sitting over there where she sat down and where the other two later came in and sat down, and I am not concerned in this proceeding with segregation of the courtroom, I am concerned with keeping down confusion and preventing anything which would tend to interrupt the proceedings. Even the defense counsel made an objection during the course of the trial. He said "Your Honor, I object to all these interruptions." Murphy Bell made that objection, and I wasn't causing the interruptions. I saw the impending trouble coming on here, and I had issued no orders about any seating arrangements, but foreseeing that possible trouble might happen I ordered the bailiff to go out and talk to this woman who first sat over there; I didn't want any trouble, and she said she couldn't hear. I said "You don't have to hear." I didn't say this, but I had this in mind; we are not conducting a show or a play. It is not necessary that you hear. I have to hear and if it were a jury trial, the jury would have to hear and the lawyers have to hear what is going on, but the audience doesn't have to hear. We had a voir dire examination today and a group of school children were in the courtroom and the jurors were sitting in the back. The lawyers asked them if they heard what went on and they said "No, we caught some of it but we didn't catch it all," so the audience doesn't have to hear. When a situation develops where the judge thinks it is a wise and prudent thing to do he can clear the courtroom. The law gives an accused the right to a public trial, but if the judge sees—and it is the duty of the judge either when it actually happens or when it is impending and imminent to circumvent it, pre-

vent it if possible, and that is the duty of the judge to maintain law and order, peace and quiet in the courtroom, and as long as I am a judge I am going to do it to the best of my ability until some appellate court tells me I don't have the right to do it. Justices of the peace, Article 12 of the Criminal Code, and judges of Municipal Courts shall have power to punish each contempt of their authority by a fine of not more than Ten Dollars or by an imprisonment of not more than three days, or both. Now judges of all other courts shall have power to punish each contempt of their authority by a fine of not more than One Hundred Dollars or by imprisonment for not more than thirty days, or both. The power of the court to punish for contempt is exercised for two purposes: one, to vindicate its dignity for disrespect shown to it, or its orders; two, to complete the performance of some order or decree of the court which it is in the power of the party to perform and which he refuses to obey. Now, there is another article of the Code of Criminal Procedure, Article 422: Judicial cognizance is taken of the following matters, and then there is a cataloguing of all these matters from one through seven, and I will read the pertinent one, the one which I consider pertinent, Section (6). "Judicial Cognizance is taken of the following matters: * * * (6) The laws of nature, the measure of time, the facts disclosed by the calendar, the facts of geography, the geographical and political divisions of the world, the facts of history and the political, social and racial conditions prevailing in this state;" specific reference to this state. Now my responsibility, my duty, is to have an orderly trial without interference, without confusion, without disrespect, and be it whatever cause it may be that interferes with that, I am going to stop it, and that is what I attempted to do in this case. I told Reverend Jelks in advance that I had issued no orders about who should sit where, but this was a peculiarly volatile case, where in my opinion, racial tensions would mount, and they did mount, and I took judicial notice of that fact, and I

had the authority to do that under 422, and I am going to continue to do that. If it is wrong to have a segregated courtroom, a segregated courthouse, those who want to get the matter adjudicated have a perfect right to do it, to file a civil suit and do it either in the state court or in the federal court, but to tell the judge, be it me or any other judge, you don't have the authority to punish anybody for contempt regardless of what appraisal of the situation you have in mind. In that instance cited by me I know that the judge would have punished those men for contempt who came in here with pistols on them and who were drinking had they not acceded to the request. Those who were drinking to excess on that occasion were put out, and I think the judge had a perfect right to do that. With the racial situation as it is here in this parish, as it was brought to a focal point in this particular case, where the accused was charged with maligning and defaming two public officials—

Mr. Jones: Your Honor, may I ask one question?

The Court: Yes.

Mr. Jones: When you are referring to men coming in with pistols, was that at the time of this trial that men came in with pistols or are you referring to some other occasion, some time before?

The Court: I think the context of my remarks are perfectly obvious.

Mr. Jones: It wasn't in connection with this case?

The Court: I say the context of my statement makes it perfectly obvious. I said the situation in this case was tense, racially speaking, to the knowledge of the court. I took judicial notice of it, and I state that one reason was that the accused, and he was entitled to his day in court, was accused with defaming (not because they were white people, but they happened to be white people) people in positions of trust and responsibility. In effect, he called the judge and the district attorney crooks, they were splitting fees illegally, improperly, and that is bound to arouse

feeling on the part of the two who were allegedly defamed and on the part of their friends; and on the other side of the picture, you have this accused who was a member of this organization pursuing, as he said, non-violent activities; but, of course, activities can be violent by words alone. Many a person has been killed over something said, not by overt acts, physical acts, and the accused in that case, by calling the judge and the district attorney crooks, accepting bribes, in a meeting where the press was present and a hundred people or more, that was calculated to arouse tension, and the court knew that and I knew the tensions on the other side, and I didn't know what was going to happen. With feeling like it was, with these relators seated over on that side, fights might have broken out, somebody might have gotten hurt, and if I foresee something like that—if the relators feel that their children are entitled to those things like they have expressed, and they have a right to express themselves that way, some of them belong to the NAACP and the NAACP is well represented by legal counsel, they can file suit to desegregate the courthouse, the courtroom, but to tell Judge LeBlanc, or any other judge, that you don't have control of your court, you don't have the right to anticipate that serious disorders are going to occur; when you take any action we know you are taking it on the ground of segregation only, well that isn't true, because I have been judge here about four and a half years and I have never done anything like that. But this is a peculiar case and the feelings, sentiments of the people of both races have been aroused, and if I can keep somebody from getting hurt or getting killed I am going to do it, and I think that I had a perfect right to issue that order. I didn't want to put these people in jail. I told them if they wanted to leave they should leave. They didn't have to stay here. They are welcome here if they want to, but under the conditions prevailing I wanted them to sit where they had been sitting over there; I didn't want any incidents created here and anybody getting hurt, and that is why I did it.

I requested it, and after I requested it they refused the request to either move or to leave. Then I ordered them to move over and they refused the order. They disobeyed that order. I think it was a lawful order. I think as a judge I had an inherent right to do what I did; I had the authority under the law to take judicial notice of the existing racial tensions, and I did so take. Now, the appellate court can say I am wrong, but that is the way I viewed it and if the situation presents itself again I will do exactly the same again, because I am going to try to maintain peace and order here, and if peace and order get out of hand, or if I can divine or anticipate it is about to get out of hand, I am going to act before it is too late. So, for these reasons the court recalls and sets aside the writ of habeas corpus.

Mr. Jones: To which ruling I except and ask that a formal bill be reserved, asking that the ruling of the court and the opinion therefor, the reasons of the court, all be made a part of the bill of exception.

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Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

OPPOSITION TO GRANTING WRITS OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

Rule 19, Paragraph One, Subsection A of this Honorable Court's rules, states:

> "1. A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered:
>
> (a) Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably

not in accord with applicable decision of this court."

For the reasons hereinafter given, it is contended that this is not an appropriate case in which a writ of certiorari should issue for the reason that a federal question is not involved, and, in the alternative, assuming that such a question is involved this court would resolve it in conformity with the decision of the Supreme Court of the State of Louisiana.

REASONS FOR DENYING THE APPLICATION FOR WRIT OF CERTIORARI

Generally speaking, certiorari will not lie to review questions of fact. 14 CJS Section 22(e). The foregoing rule is subject to the limitation that in certiorari evidence may be received only for the purpose of ascertaining whether the lower court's findings are supported by any evidence, or whether its findings are clearly against the evidence. 14 CJS Section 172 (2). The scope of review under the writ of certiorari is confined to the record, and certiorari will not lie for the purpose of reviewing defects not appearing on the face of the record. 14 CJS Section 34.

The record in this case reflected from the STATEMENT FROM BENCH OF TRIAL JUDGE ON DECEMBER 3, 1962, cited at pages 12 through 17 of petitioners' brief, reveals that the trial judge's action from which this controversy arose was based upon information which he was personally aware of, and said action was taken with the view of conducting an orderly trial. Petitioners contend that the action of the

trial judge was based principally upon the premise and with the view of segregating the courtroom. This the trial judge, in his statement from the bench on December 3, 1962, categorically refuted.

A courtroom is designed principally for the conduct of trials. In a criminal case the constitutional right of an accused to a public trial is a privilege intended for his benefit, and does not entitle the general public to take advantage of such a trial. Thus it has been generally held that courts may exclude the public, or certain members thereof, from trial proceedings when based upon reasons which would tend in any manner to interfere with the fair and impartial administration of justice. For example, the action of the court in excluding members of the public from a trial involving a rape prosecution involving young girls was upheld as against the contention of deprivation of a public trial. *Geise v. U. S.*, 262 F. 2d 151, certiorari denied 80 S. Ct. 94; 361 U.S. 842, 4 L.Ed. 2d 80; *U.S. v. Kobli*, 172 F. 2d 91; *Sawyer v. Duffy*, 60 F. Supp. 852. Also the power and right of the court to exclude photographers from the courtroom has been upheld on the basis that the constitutional right of an accused to a public trial is a privilege intended for his benefit and not for the benefit of the public. *Tribune Review Pub. Co. v. Thomas*, 153 F. Supp. 486, affirmed 254 F. Supp. 883.

From the foregoing authorities it would seem that in appropriate cases the court, having the power and right to exclude certain members of the public from a trial, would necessarily have the lesser right to control

those who were permitted and included within the courtroom during the progress of the trial.

The Sixth Amendment to the United States Constitution provides:

> "In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed, . . ."

This contempt proceeding with which this court is concerned arose during the trial of a misdemeanor, which means in the State of Louisiana that the trial judge acts in the role of the jury. As the jury he, himself, determined that impartiality would best be served by the action he took which forms the basis of this issue.

An intrinsic evaluation of the issue herein presented can only be determined by the factual foundation upon which the trial judge acted. As stated in the trial judge's statement from the bench of December 3, 1962, cited at pages 12 through 17 of petitioners' brief, a proceeding captioned *State of Louisiana v. Rev. B. Elton Cox* had been in progress. B. Elton Cox, a Negro, had been charged and was being tried for defaming District Judge Fred A. Blanche, Jr. and the District Attorney, Sargent Pitcher, Jr. As stated by the trial judge, prior to and during the course of this trial both the District Attorney, Sargent Pitcher, Jr., and one Reverend Jelks, the local NAACP leader, informed the court that their lives had been threatened. During the course of the trial of Rev. B. Elton Cox petitioners sat in an area where members of the Caucasian race were

seated. The trial judge was, of course, cognizant of the racial conditions prevailing in the area at the time, and aware of the information relative to threats which had been received by the District Attorney and by Reverend Jelks. At the time petitioners sat in the area where members of the Caucasian race were seated one of the defense counsel for Rev. B. Elton Cox objected, stating to the court that he "objected to all these interruptions." (See page 13 of petitioners' brief.) The trial judge, being apprehensive of serious disorder in view of his personal knowledge of the situation, had petitioners brought before the bar and gave them an opportunity to either move to another part of the courtroom, or, in the alternative, to leave the courtroom. Petitioners refused either alternative, whereupon the trial judge ruled them in contempt of court.

As stated by petitioners in their brief at page 3, under Article 19, Section 17 of the Louisiana Constitution the trial judge has the power to punish for contempt of court. Furthermore, as stated at page 3 of petitioners' brief, under L.R.S. 15:11 every court has the inherent power to enforce the orders which it has power to render, and it is the inherent duty of every judge to see that proceedings in the court in which he presides shall be carried on decently, with dignity and in an orderly manner. Under said section the court has the power to punish, as being a contempt, every interference with or disobedience of its process or orders, as well as every act interrupting or tending to interrupt its proceedings, or impairing the respect due to its authority. The question presented herein would

seem to be whether or not the trial judge had a legitimate basis for his action, or, in effect, whether or not the trial judge had reliable information or evidence which would tend to interrupt the proceedings or which would interfere with the orderly manner of a judicial proceeding.

In determining this question it should be borne in mind that a public trial is basically a constitutional right and privilege of the accused, intended for his benefit and not that of the public, and that the duty of the trial judge in ascertaining the rights and privileges granted to an accused under the Sixth Amendment to the United States Constitution is subordinated to the rights and privileges of the attending public. In determining this question it should also be borne in mind that under L.S.R. 15:422 judicial cognizance may be taken of the political, social and racial conditions prevailing in this state.

It is respectfully submitted that the action of the trial judge, based upon what he had authority under the law to take judicial cognizance of and what he had personally been informed about the case with reference to the threats of the district attorney and the NAACP leader, was valid.

There is no question but that these petitioners were in jail by virtue of a court order. In these habeas corpus proceedings filed in the trial court the trial judge was guided by the provisions of LSA-R.S. 15:-137, which provides:

"Confinement by court order; restoration of liberty after hearing on return.

If, after the hearing of the return, it appears that the relator is confined by the order of some court, he can be restored to liberty only in the following cases:

(1) Where such court has exceeded its jurisdiction;

(2) Where the original imprisonment was lawful, but by some act, omission or event which has since occurred, the relator has become entitled to his liberty;

(3) When the order of imprisonment is deficient in some legal requisite;

(4) When the order of imprisonment, although legal in form, imposes an illegal imprisonment; provided that whenever any person shall have been sentenced to any imprisonment in excess of the maximum term allowed by law for the offense of which he shall have been convicted, such person shall not, until the expiration of such maximum term, be released upon habeas corpus;

(5) When the person having the custody of the relator is not the person allowed by law to detain him;

(6) When the imprisonment is not authorized by any order, decree, judgment or sentence of any court, or by any provision of law;

(7) When the relator has been committed on a criminal charge without reasonable or probable cause.

It will thus be noted that under the foregoing provision of law and the record in this case that the trial judge could not legally restore petitioners to liberty.

This case would seem to represent a situation whereby the actions of the trial court were taken with the view of assuring to the defendant in the criminal case his constitutional right of a fair and impartial trial, and that, as such, considerations toward that view are subordinate to any considerations of alleged constitutional rights and privileges by attending spectators. The action of the petitioners herein had the effect of interfering with the trial judge's duty to see that the accused obtained a fair and impartial trial. The trial court had the power to protect the execution of its business from obstruction by petitioners. *Field v. United States*, 193 F. 2d 86.

CONCLUSION

WHEREFORE, for the reasons hereinabove stated, it is respectfully submitted that this petition for writ of certiorari to the Supreme Court of Louisiana should be denied.

Respectfully submitted,

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PROOF OF SERVICE

I, Sargent Pitcher, Jr., one of the attorneys for Bryan Clemmons, Sheriff, East Baton Rouge Parish, Louisiana, respondent herein, certify that on the ___ day of April 1963 I served copies of the foregoing brief of Bryan Clemmons, Sheriff, East Baton Rouge Parish, Louisiana in Opposition to Application for Writs of Certiorari to the Louisiana Supreme Court, by mailing the required number of copies, postage prepaid, to counsel of record for petitioners at the following address:

Robert L. Carter, 20 West 40th Street, New York 18, New York, and Johnnie A. Jones, 530 South 13th Street, Baton Rouge 2, Louisiana.

Sargent Pitcher, Jr., counsel of record for the respondent.

Sworn to and subscribed before me, the undersigned Notary Public within and for the Parish of East Baton Rouge, State of Louisiana, this ___ day of April 1963.

NOTARY PUBLIC

2926-B. 4-63

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